

ENTERED

August 24, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOHNNY LEE DAVIS,

Plaintiff,

VS.

CITY OF ARANSAS PASS, TEXAS, *et al*,

Defendants.

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CIVIL ACTION NO. 2:16-CV-228

ORDER


In a prior lawsuit against the City of Aransas Pass and Aransas Pass Police Department, No. 13-cv-363, this Court dismissed Plaintiff Johnny Lee Davis's federal claims related to alleged defamation in the context of Defendants' high profile murder investigation. This Court declined to retain supplemental jurisdiction over Davis's state law claims and dismissed them without prejudice. Subsequently, Davis filed this action in state court against the City of Aransas Pass, Aransas Pass Police Department, and three of its officers, alleging state law defamation claims arising out of the same events as the prior lawsuit. D.E. 1-4, pp. 5-17.

Because his pleading recites federal claims in addition to the state law claims, Defendants removed the action to this Court pursuant to federal question jurisdiction, 28 U.S.C. § 1331. D.E. 1. Before the Court is Davis's Motion to Remand to State Court (D.E. 5) indicating that his intent was to pursue only his state law claims pursuant to this Court's prior Final Judgment. Because his pleading makes reference to rights secured by

the United States Constitution and cognizable under 42 U.S.C. § 1983, a federal statute, the Court DENIES the motion to remand.

However, the Court is aware that Davis is proceeding pro se and—as evidenced by his motion—his invocation of federal law may have been a product of mistake rather than representing an intention to seek remedies under federal law. Consequently, the Court grants Davis leave to file an amended complaint on or before September 9, 2016. In the event that Davis’s amended complaint voluntarily eliminates all federal claims from this action, the Court will remand the action to state court for lack of federal jurisdiction. If Davis does not eliminate his federal claims, this Court will proceed with this action.

ORDERED this 24th day of August, 2016.


NEELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE